

REMARKS

This Application has been carefully reviewed in light of the Final Action issued April 18, 2007. Claims 1, 2, 4, 5, 8, 10, 11, 13-16, and 18-20 are pending in this application with Claims 6, 7, and 9 being withdrawn. In order to advance prosecution of this Application, Claims 1, 5-7, 11, 16, and 19 have been amended. Applicant respectfully requests reconsideration and favorable action in this Application.

Claims 1, 5-7, 11, 16, and 19 have been amended to merely provide location clarity for the forward toe section and the rear heel section. These amendments do not affect the merits and issues currently present in the Application.

The drawings stand objected to under 37 C.F.R. §1.83(a) as not showing every feature of the invention specified in the claims. The Examiner has indicated that the drawing changes submitted adding midsoles and moving the location 824 where the first portion 820 and the second portion 826 meet constitute new matter. Applicant respectfully traverses this amendment. Applicant has repeatedly shown that the specification clearly discloses that the shoe can have one or more midsoles. See page 29, lines 11-13, of Applicant's specification. Applicant has repeatedly shown that Applicant's specification clearly shows that the first portion 820 and the second portion 826 meet at a point 824 substantially halfway with respect to the upper or outsole of the shoe. See page 29, lines 16-20, of Applicant's specification. The changes made to the drawings, as requested by the Examiner, literally track the exact language of the specification. As a result, the drawing changes are consistent with Applicant's specification and do not add any new matter. Thus, there is no basis for the Examiner's position of new matter. Therefore, Applicant respectfully

submits that the amended drawings are in accordance with 37 C.F.R. §1.83(a).

Claims 1, 5, and 11, stand rejected under 35 U.S.C. §102(b) as being anticipated by Snabb, et al. Independent Claims 1 and 11 recite in general an insole being configured with a constantly thick forward toe section and a decreasingly thick rear heel section with the constantly thick forward section meeting the decreasingly thick rear heel section at a substantially halfway point of the upper or outsole of the shoe. By contrast, the Snabb, et al. patent clearly states that its forward toe section does not have a constant thickness until location 29. Location 29 is not at a halfway point with respect to the shoe upper or outsole as required by the claimed invention. In fact, location 29 is underneath the toes of the wearer's foot. The toes of a wearer's foot would never be considered to be at a halfway point of an upper or outsole of a shoe. Moreover, the Snabb, et al. patent clearly teaches away from having this feature at a halfway point of the shoe. (See col. 3, lines 48-50, of the Snabb, et al. patent). In addition, the negative slope of the shoe of the Snabb, et al. patent is clearly caused by the outer sole 20 and not the inner sole 24. Thus, the Snabb, et al. patent fails to teach each and every limitation of the claimed invention as required to support an anticipation rejection.

The Examiner now tries to argue that the Snabb, et al. patent has an insole with a constant thickness to point 28 under the ball of a wearer's foot. This position is not supported by the disclosure or drawings of the Snabb, et al. patent. First, the various thicknesses of the shoe of the Snabb, et al. patent is based on its outer sole 20. Second, the Snabb, et al. patent clearly states that the slope is decreased to 0 degrees under the toes at point 29, forward and

beyond the ball centers of pressure at point 28. See col. 4, lines 37-40, of the Snabb, et al. patent. As a result, there is no constant thickness at a point substantially halfway with respect to an upper or outsole of a shoe as required by the claimed invention. For arguments sake, even if it is assumed that the slope is 0 degrees at point 28, this would never be considered to be at a halfway point of an upper or outsole of a shoe. Therefore, Applicant respectfully submits that Claims 1, 5, and 11 are not anticipated by the Snabb, et al. patent.

Claims 8, 14, 16, 19, and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Snabb, et al. Independent Claim 1, from which Claim 8 depends, and Independent Claim 11, from which Claim 14 depends has been shown above to be patentably distinct from the Snabb, et al. patent. Independent Claim 16 includes the similar features shown above to be patentably distinct from the Snabb, et al. patent. Moreover, the Snabb, et al. patent fails to mention the term midsole let alone whether such an element can be incorporated therein. Therefore, Applicant respectfully submits that Claims 8, 14, 16, 19, and 20 are patentably distinct from the Snabb, et al. patent.

Claims 15 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Snabb, et al. in view of Borgeas. Independent Claim 11, from which Claim 15 depends, has been shown above to be patentably distinct from the Snabb, et al. patent. Moreover, the Borgeas patent does not include any additional disclosure combinable with the Snabb, et al. patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claim 15 is patentably distinct from the proposed Snabb, et al. - Borgeas combination.

This Response to Examiner's Final Action is necessary to address the Examiner's interpretation of the cited art in support of the rejections to the claims. This Response to Examiner's Final Action could not have been presented earlier as the Examiner has only now provided the current interpretation of the cited art in rejecting the claims.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.

If there are matters that can be discussed by telephone to advance prosecution of this Application, Applicant invites the Examiner to contact the undersigned attorney at the number provided below.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,  
BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in dark ink, appearing to read 'Charles S. Fish', is written over a horizontal line.

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